

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

DAVID BURBANK	:	
	:	
v.	:	Civil No. 1:03CV213
	:	
TOWN OF MORRISVILLE,	:	
et al.	:	
_____	:	

RULING ON MOTION TO REMAND
(Paper 22)

On or about July 11, 2003, plaintiff David Burbank filed this action in Lamoille County Superior Court. See Verified Complaint (Paper 7). He asks the court to "void" a tax sale conducted by the Town of Morrisville and to order the return of his home. See Paper 7 at 14. He also seeks, inter alia, a declaration that the Town's conduct prior to and after the tax sale "deprived [him] of his right to due process guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution." See Paper 7 at 14-15.

Citing the plaintiff's claim for relief under the U.S. Constitution and pursuant to 42 U.S.C. § 1983, on August 6, 2003, the defendants filed their Notice of Removal. See Paper 1. Claiming the Tax Injunction Act, 28 U.S.C. § 1341 (hereinafter "the Act"), divests this Court of jurisdiction over his complaint, the plaintiff has moved to remand this case to Lamoille County Superior Court. See Memorandum in Support of Motion to Remand (Paper 23) at 1.

The Act states:

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

28 U.S.C. § 1341.

Section 1341 "is rooted in principles of federalism and in recognition of a state's need to administer its own fiscal operations, and was written primarily to limit federal-court interference with local tax matters." Bernard v. Village of Spring Valley, 30 F.3d 294, 297 (2d Cir. 1994). As the Supreme Court has explained:

[D]espite the ready access to federal courts provided by Monroe [v. Pape], 365 U.S. 167 (1961) and its progeny, we hold that taxpayers are barred by the principle of comity from asserting § 1983 actions against the validity of state tax systems in federal courts. Such taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate and complete, and may ultimately seek review of the state decisions in this Court.

Fair Assessment in Real Estate Assoc., Inc. v. McNary, 454 U.S. 100, 116 (1981) (footnote omitted).

The Act applies equally to this case, where a plaintiff challenges the administration of a local tax. See, e.g., Bernard, 30 F.3d at 297-98 (Fair Assessment excludes from federal jurisdiction cases challenging the constitutionality

of local tax-assessment matters); Howard v. Bryan, 1994 WL 721415 (N.D. Cal. 1994) (the distinction between a challenge to a tax system itself and a challenge to the way a system works is "irrelevant"). Cases cited by the defendants as suggesting the contrary are not persuasive in that they were decided prior to the Supreme Court's decision in Fair Assessment v. McNary. See Defendants' Memorandum in Opposition (Paper 24) at 3.

The plaintiff, who opposes this removal, makes no claim that the state's remedies are not "plain, adequate and complete." Absent such a showing, this matter must be heard in state court.

The Motion to Remand is GRANTED. The Clerk is directed to remand this matter to Lamoille County Superior Court.

SO ORDERED.

Dated at Brattleboro, Vermont, this ____ day of September, 2003.

J. Garvan Murtha
United States District Judge